IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1622 OF 1999

Shri A.K.Sayyad, Adult, Occ.Service, Assistant Superintendent, Civil Court, Ulhasnagar, Dist.Thane.	.. Petitioner.
V/s.	
1. The Learned District and Sessions Judge, Thane. 2. The State of Maharashtra (Through the Secretary, Dept. of Law and Judiciary, Mantralaya, Mumbai -32. 3. Shri B.B.Bagal, Adult, Occ.Service, at present posted as Superintendent, Dist. Court,Thane.	.. Respondents.

Mr.R.S.Apte with Shri Mandar Limaye for the Petitioner.

Mr.R.D.Rane, GP for the Respondent Nos.1 & 2.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 21st JUNE, 2007.

ORAL JUDGMENT : (Per F.I.Rebello,J.)

. The petitioner is in service in the subordinate judiciary. He was appointed as Bench Clerk on 30th June, 1980 in the District Court at Thane. On 4th December, 1987 the petitioner was promoted as Senior

Clerk. After having passed his higher standard departmental examination, the petitioner was promoted on 18th January, 1993 as Assistant Superintendent in a leave vacancy in the court of the Chief Judicial Magistrate at Thane.

2. On 3rd of May, 1993 the petitioner was posted in a clear vacancy of the post of Asst. Superintendent in the court of Chief Judicial Magistrate at Thane. On 19th December, 1998 the Respondent No.1 passed an order directing that promotion of the petitioner to the cadre of Superintendent should be deferred for a period of two years. While passing the said order, it appears that what the Respondent No.1 took into consideration was firstly the two communications; one of 12th December, 1986 i.e. the confidential report for the period from 09.07.1986 to 09.04.1987 and confidential report for the period from 01.08.1993 to 31.03.1994. It further appears that as copy of an Audit objections referred to has not been placed in the relevant file, a warning was issued to him dated 22.09.1998. It is on this basis the respondent No.1 came to the conclusion that the petitioner herein had not put up satisfactory performance so as to entail him to stake his claim for promotion to the cadre of Superintendent. Apart from not considering the claim, the Respondent No.1, further

passed an order to defer the promotion of the petitioner for a period of two years. The petitioner, thereafter, has been promoted to the post of Superintendent from 29.05.2004.

3. A reply has been filed on behalf of the Respondent No.1. The reasons of non-consideration, are the reasons which we have earlier set out.

4. The question really is when the petitioner was due for promotion in the year, 1998, his performance or the adverse entries of 1986-87 could have been considered. It is to be noted that inspite of the adverse entries of 1986-87, the petitioner was promoted on 4th December, 1987 as Senior Clerk. Subsequently, thereafter, he was promoted as Assistant Superintendent. In other words, though those adverse entries existed, it did not warrant denial of promotion to the petitioner herein. Apart from that the entry of 01.08.1993 to 31.03.1994 firstly does not indicate that it is adverse and if so it had been communicated to the petitioner. The very fact that there were no further such entries would indicate that the petitioner had improved himself. Those are two entries, apart from the order of 22nd September, 1998 which resulted in denial of promotion to the petitioner herein.

5. At the time of considering promotion, what was to be considered are the rules in force for that purpose. The officers in the zone of consideration, their records should have been called for and consdiered. That was not done. The post of Superintendent is a promotional post from the post of Assistant Superintendent. The petitioner was working in the said post on and from 18th January, 1993. Therefore, the relevant record of the past in that post ought to have been considered. Apart from the entry of 93-94 which has been explained there was a warning of 22nd September, 1998; otherwise there was nothing else in the petitioner’s record which is brought to our attention warranting that the petitioner could not have been considered for the post of Superintendent on promotion. The consideration, therefore, of the adverse entries of 1986-87 to deny the petitioner’s promotion and even postponing his promotion, in our opinion, was irrelevant. Though Respondent No.3 is served he has not put in any appearance.

5. That brings us to the warning of 22nd September, 1998. At the highest, it was a lapse of a report not been placed in the proper record. That could not have been a reason to deny the petitioner promotion. Nothing

has been brought to our attention either by way of affidavit or the record to show that there are adverse reports for the period from 1993 to 1998 which would indicate that he was not fit for promotion. The confidential report for the period from 01.08.1993 to 31.03.1994, as explained, in our opinion, also could not have been the basis to deny promotion to the petitioner.

6. However, as time has passed and on consideration, in our opinion, ends of justice would be met if relief is granted in terms of prayer clause (a) and the petitioner is granted a deemed date of promotion without back wages, but increments and that services to be considered for the purpose of all terminal benefits, including pension.

7. Apart from that, deferring the promotion, which practically imposed punishment on the petitioner herein, has been done without giving any opportunity to the petitioner as to why his promotion ought to have deferred. In our opinion, on that count also, the impugned order is liable to be set aside.

8. In the light of that, the petition will have to be allowed in the following terms :

i. Petition made absolute in terms of prayer clause (a). The petitioner be given deemed date of promotion as Superintendent from the date Respondent No.3 was given the promotion. The petitioner, however, would not be entitled to back wages from 19.12.1998 to 29.05.2004. The respondent, however, to fix the petitioner in the scale of Superintendent from 19.12.1998 and to release his yearly increments and accordingly fix his pay on and from 29.5.2004 and pay him in the refixed pay scale from 29.05.2004 alongwith all arrears till date.

ii. We further make it clear that this deemed date of promotion will also ensure for the purpose of his terminal benefits which include pensionery benefits.

. Rule is made absolute accordingly with no order as to costs.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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